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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th April 2007

No.3865-1i/1(S)-6/2002/LE.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 23rd March, 2007 in I.D. Case No. 37/ 2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management the District Transport Manager (Admn.) At/P.O.- Bargarh, District-Bargarh and its workman Shri R. K. Sahu, Ex-Conductor, C/o-Tiknu Sahu, at Kalamandir, Post/District: Bargarh was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER,: LABOUR COURT,: SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 37 of 2002

Dated, the 23rd March, 2007.

Present:

Shri P. K. Mohapatro, L.L.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between:

The Management of
the District Transport Manager (Admn.),
At/P.O.-Bargarh,
Dist: Bargarh.

... First-Party—Management.

AND

Its Workman
Shri R. K. Sahu, Ex-Conductor,
S/o. Tiknu Sahu,
At- Kalamandir,
P.O./Dist: Bargarh.

... Second-Party — Workman.

Appearances :

For the First-Party—Management. ... Shri B.S. Panda, Representative
of Management.

For the Second-Party—Workman. ... Self.

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour and Employment Department U/s. 10 & 12 of the Industrial Disputes Act, 1947 for adjudication of disputes scheduled below :—

“ Whether the termination of services of Shri Raj Kishore Sahu, Conductor, O.S.R.T.C. Podampur by way of compulsory retirement with effect from 15th July 2000 by the D.T.M. (Admn.), Bargarh is legal and/or justified ? If not to what relief is he entitled ?”

2. The case of the workman is that he was working as a conductor under the Management and during his service at Bargarh without any good ground the District Transport Manager (Administration) of Bargarh Zone harboured grudge and then to satisfy it suspended him (Workman) from service vide Order Dated the 31st May 1999 and then drew up a disciplinary proceeding with some cooked up allegations and after conducting a slipshod enquiry hold him guilty and vide office order No. EB-I-43/99, dated the 15th July 2000 punished him. As it appears, the workman was given compulsory retirement and the period of suspension was treated as such. To add to this his absence from duty on 28th May 1999 was held to be wilful and treated as absent. Then, he preferred an appeal before the Divisional Manager (Admn.) of O.S.R.T.C. which is still subjudice. It is the specific case of the workman that the charges framed against him are all manufactured by the D.T.M. and it has no basis to impose the highest punishment. To sum up, the workman has prayed for answering the reference in his favour.

3. The Management side has contested the above allegation by stating that the workman during his service period is in the habit of committing misconduct and the charges framed against him are based on facts and there is no reason to conclude that the enquiry is perfunctory in nature. In Para-14 of written statement it is specifically averred by the D.T.M. of Bargarh unit that after taking all the aspects relating to the workman into consideration, the punishment of pre-mature retirement was imposed on him though it is a fit case of dismissal from service without any benefit. In Para-15 it is his averment that the workman was punished on 23 occasions in the past, as a result, he was a liability to the Corporation and in the best interest of the corporation such a step was taken up. To sum up, the D.T.M. has justified his action of compulsory retirement meted to the workman.

4. The workman has filed his rejoinder. In it, he has challenged all the actions of the Management and further averred that the charges framed against him are all cooked up and those are not based on sound data. He has also stated that the enquiry conducted is far from satisfactory and the plea that his past records are bad is a false and manufactured one. According to him, the punishment inflicted on him was purely due to personal grudge and there is no reason for this Court to endorse it.

5. By taking note of the pleadings of the parties, the following issues are settled in this case.

ISSUES

- i. “ Whether the domestic enquiry conducted by the Management of O.S.R.T.C., Bargarh is fair and proper ?”
- ii. “ Whether the termination of services of Shri Raj Kishore Sahu, Conductor O.S.R.T.C., Podampur by way of compulsory retirement with effect from 15th July 2000 by the D.T.M. (Admn.), Bargarh is legal and justified ?”
- iii. To what relief, the workman Shri Sahu is entitled ?”

6. With the consent of the parties, the fairness of the domestic enquiry (issue No. i) was taken up as a preliminary issue and vide Order dated 14th July 2006 the same was answered against the Management. It was held on that day that the domestic enquiry was not fair and proper and in view of the stand taken by the Management in Para-16 of the written statement that in case the domestic enquiry was held to be improper, the Management side be permitted to lead evidence on merit, the further hearing of the case was taken up and during course of the same, the parties adduced oral and documentary evidence to substantiate their respective plea. As it appears the Head Clerk of O.S.R.T.C. Office Bargarh namely Murali Behera is examined as M.W.1 and another Conductor namely Haramohan Barik is figured as M.W.2 . One Junior grade Typist of the Management office namely Gitanjali Barik is examined as M.W.3. The retired Head Clerk of the Management office namely Dukhidhar Suna is examined as M.W.4 in this case. To add to this, the Management side has exhibited some documents which are marked as Ext. 1 to 12/a.

The workman has filed some documents which are marked as Ext.A to G. To buttress his claim, he (workman) has also adduced further evidence in relation to other issues. Keeping the above position in view, I will now deal with the other issues settled in this case.

FINDINGS

7. Issue No. ii:- Under the above issue it is to decide whether the termination of the workman by way of compulsory retirement is legal and/or justified. According to the Management, the charges framed against the workman are all serious in nature and those are fit for an order of dismissal, but by keeping note of his long service an order of premature retirement from service without affecting his pensionary benefits was passed and there is no reason to differ with it. During course of hearing, the Management side has filed the chargesheet (Ext.1) wherein four charges have been framed against the workman. The first charge relates to non-performance of duty by the workman on 29th May 1999 whereby he was directed to perform duty in Padampur-Sambalpur route with the Vehicle No. OIS-7698 and the Charge No. 2 which is of similar nature, but took place on 28th May 1999, whereby he was asked to perform duty in Harishankar-Bargarh route with Vehicle No. OR-15/8915. The third charge relates to his misconduct in side the office on 9th June 1999 at 3.30 P.M. The fourth one relates to the poor income given by the workman.

In relation to the charge No.1 and 2 the workman in his statement of claim has stated that those are of manufactured allegations as because on 29th May 1999 he was physically ill, as a result, he could not perform his duty and even he was shifted to hospital on that day by Noor Khan the Driver of Sambalpur Unit and on 28th May 1999 which relates to charge No. 2 it is specific case of the workman that his duty was changed by the A.T.M. (Admn.) of Padampur Unit and in his place Shri D.C. Maharana was deputed and accordingly the A.T.M. directed him (workman) to attend Padampur-Sambalpur route duty on 29th May 1999. In Para-6 of his statement of claim, the workman has further stated that as per the instruction of the A.T.M. (Admn.), he had left the station on 28th May 1999, as a result, his absence on 28th May 1999 was not unauthorised and it was charged with an ulterior motive. In the written statement there is no specific denial in relation to the above stand of the workman. Though in Industrial Disputes, the pleading need not be in consonance with the strictness available in the C.P.C., but the rules of natural justice require that the pleading must at least be such as to give sufficient notice to other party of the case he has to meet. In relation to the above referred charges, the Management Witnesses have adduced their oral evidence. As it appears M.W.2 has stated about the non-performance of duty by the workman on 29th May 1999. He has further stated that in place of the workman, he was directed by the A.T.M. to perform duty. In his evidence, the workman was also admitted that on 28th May 1999 and 29th May 1999 he had not performed his duty as directed by his authority. In his examination in chief, he has stated that on 28th May 1999 the A.T.M. orally changed his duty and directed him to perform duty in Padampur-Sambalpur route on 29th May 1999 and in his place Shri D.C. Maharana, Conductor was asked to perform duty in Padampur-Harishankar route. In Para-3 of his examination-in-Chief, the workman has stated in detail about the facts and circumstances which debarred him from performing his regular duty on 28th May 1999. In Para-4, he has stated about the developments that had taken place on 29th May 1999. In that Para, the workman has stated that on 29th May 1999 he performed his duty from Padampur to Sambalpur and reached at Sambalpur at about 10.30 A.M., but due to his illness on the way and also at Sambalpur, he was shifted to District Headquarter Hospital by Shri Noor Khan a Driver. So far the above two charges are concerned there is no detail cross from the side of the Management to infer that the absence of the workman is an intentional act. In cross, it is simply elicited that on 28th May 1999 and on 29th May 1999 he does not perform his duties. But in view of the fact that the same is an admitted position and in view of the positive evidence adduced by the workman in Para-3 and 4 of his examination-in-Chief explaining the circumstances under which it occurred, it is incumbent on the part of the Management to cross-examine him in relation to his conduct from which his intention could have been gathered. It may be judicially noted that due to change in the situation and for his bad health condition, the workman is justified in not attending his duty. The workman in his pleading and also in his evidence in Court has taken a positive stand that on 28th May 1999 his duty was changed by the A.T.M. (Admn.) and on 29th May 1999, he performed his duty in part and after reaching at Sambalpur Bus stand his illness aggravated, as a result, he could not perform his

duty. In absence of any material particulars any other view in contrary to the evidence available in Para-3 and 4 of examination-in-Chief of the workman cannot be taken. So it is very difficult to say that those are intentional acts of the workman. It may be pertinent to mention here that the memory of the D.T.M. had failed him to examine the A.T.M.(A) who according to the workman has changed his duty on 28th May 1999. Rather the plea of the workman that on 28th May 1999 the A.T.M., Padampur has changed his duty by orally directing him to perform duty on 29th May 1999 in Padampur-Sambalpur route sounds probable as it is the admitted case of the parties that on 29th May 1999 he performed a part of his duty and at Sambalpur Station, he could not attend his duty due to ill-health, as a result, another man was deputed in his place. It is also not suggested to the workman that his plea available in Para-3 and 4 of examination-in-Chief are false and cooked up. Furthermore, the same is deriving support from the representations of the workman which are proved in this case. The evidence of Horamohan Barik (M.W.2) is also extending help to the stand of the workman. according to him (M.W.2) the workman did not attend his duty and then he was deputed to perform his duty in the Bus running from Sambalpur to Padampur. So the above referred two charges could not be established properly from the side of the Management and in my opinion there are good grounds to say that non-performance of duty of the workman on 28th May 1999 and 29th May 1999 are not his intentional acts and those are an outcome of changing situation. The stand taken by the workman in his representations (Ext.A,C and F) are also relevant for this purpose.

8. The next charge relates to the indecent behaviour of the workman inside the office of D.T.M. on 9th June 1999 at about 3.30 P.M.. According to the Management on the above referred date and time the workman entered inside the establishment section of the office of D.T.M. (Admn.) O.S.R.T.C., Bargarh and forcibly sat on a Chair in front of Shri D.D. Suna, Head Clerk of the office (M.W.4) and started rebuking D.T.M. in a louder voice by pointing to the chamber of the D.T.M.. In the charge sheet the words used by the workman and the persons present at the relevant time are duly mentioned. To suffice it M.W.3 has stated that the workman by sitting in front of the Head Clerk passed remarks aiming the office room of the D.T.M. and she (M.W.3) has also stated the words used by him. The Head Clerk who is figured as M.W.4 has also supported the case of the Management in this regard. The workman has denied this aspect. There is no good reason for M.W.3 and 4 to tell lie against the workman. Admittedly at the relevant time the D.T.M. was absent in his Chamber. The workman hurled the obscene words pointing the room of the D.T.M. and in presence of M.W.3, 4 and others. The presence of the workman inside the office room at the relevant time is not under challenge. In his evidence, he has stated that he had been there to put forth his grievance for early completion of his departmental proceeding. In view of his presence inside the office room which is not under challenge and by taking note of the evidence of a lady employee and M.W.4, I am convinced that the workman has passed the obscene remarks against the D.T.M. in his absence by pointing to his Chamber. So charge No.3 is proved against the workman.

9. So far Charge No.4 is concerned it is purely based on assumption. The fall of income though can be treated as a moral ground for roping the workman administratively, but it cannot be a legal ground to haul him up. It is the case of the Management that in the month of April, 1998 and January, 1999 the income position of the Corporation, was very low. If it is accepted in to then the income position of the workman in relation to other months except the above referred two months was not low and it is upto the mark. Nothing is placed before this court to conclude as to what was the standard fixed by then by the Management. There is also nothing to show that any target was given to the workman by then. No additional evidence is led touching the above aspect. The Management witnesses who have been examined in this case have stated about the other charges but not charge No.4. In absence of any positive evidence the mere allegation that income position was low in the above referred months and the same is an intentional act of the workman cannot be accepted. So Charge No.4 is also not proved.

10. To sum up, Charge No.1, 2 and 4 are not proved against the workman but Charge No.3 is proved against him. From the evidence on record and after perusing the documents filed by the parties I am of opinion that the workman had used obscene words against the D.T.M., Bargarh by entering inside the Establishment Section of the office and he had used such words in presence of his subordinate staff. Using obscene words in presence of the subordinate staff indicates the disloyalty of the workman towards his authority. An employee is expected to be loyal to his authority, but that does not mean that he should be loyal to all the whims of his boss. In this case the workman has pleaded that the D.T.M. was harbouring grudge on him, as a result, he had imposed this major punishment. But on perusal of the evidence of the workman nothing substantial is available to conclude that he was having bad relationship with the D.T.M. of Bargarh Zone. So it is difficult to swallow that the D.T.M. has acted with the ulterior motive. But it is definitely a major punishment. As per law while imposing the same, it is the duty of the employer to comply with the requirements of the procedure laid down in the standing orders applicable to its establishment. He has also to take note of the rules of natural justice.

11. The final order passed by the D.T.M. is marked Ext.11 in this case. On perusal of the same it is forthcoming that he had taken note of the previous service record of the workman. As it appears on twentythree occasions explanation was called for from the workman and on twenty occasions punishment was imposed on him. Most of the punishments relate to the official conduct of the workman. The entire antecedents of the workman are mentioned in the body of Ext.11. Admittedly the management organisation is a loss making Public Sector Undertaking and the loss is cumulative in nature. If in such organisation, employees like the present workman will continue it will be a liability and the condition of the organisation will go from bad to worst. He has compulsorily retired the workman after considering that the workman had served in the organisation for a long period and there is no reason to curtail his financial benefits. Definitely such a punishment is milder than the extreme punishment of dismissal as in case of dismissal the employee loses a number of benefits. In the order, the Disciplinary Authority has mentioned the entire pros and cons of the

past misconduct and has also dealt as to how he was a liability to the organisation. After scrutiny, I am of opinion that the conclusion of the D.T.M., Bargarh Zone is not arbitrary. He has not imposed the major punishment by simply taking note of the present misconduct, but by weighing the past antecedents. A workman who has received punishment on twenty occasions deserves no sympathy of this Court. So the punishment of compulsory retirement is appropriate.

12. Issue No.iii :- In the above issue it is to be determined as to what relief the workman is entitled to get. I have already arrived into a conclusion that the punishment of compulsory retirement is justified and there is no reason to lessen it. While inflicting the above major punishment, the D.T.M., Bargarh Zone has also passed order not to treat the suspension period as qualifying service and to treat his absence on 28th May 1999 as absent from duty. But in my opinion the additional punishments are not justified for the simple reason that after the order of compulsory retirement the contract of service is going to be ceased and in such a situation there is no need of giving additional punishment. The punishment is being imposed to rectify the delinquent employee. Here the workman was retired compulsorily and there is no question of his performing any duty in the organisation, as a result, there is no scope for rectification or change. So I am of opinion to show leniency to the extent that the period of suspension be counted while computing his qualifying service and his absence on 28th May 1999 be treated as leave. Hence the following award.

AWARD

The reference is answered on contest, however in the circumstances there is no order pertaining to cost. The termination of services of Shri Raj Kishore Sahu, Conductor, O.S.R.T.C., Podampur by way of compulsory retirement with effect from 15th July 2000 by the D.T.M. (Admn.), Bargarh is legal and justified. But while computing his service benefits, the period of suspension be taken into account as qualifying service and his pay dated 28th May 1999 be disbursed if not yet given to him by treating the same as leave. But the workman cannot claim his arrear salary in relation to the suspension period. It can only be used for the limited purpose as indicated above.

Dictated and corrected by me.

Shri P. K. Mohapatro,
Dt.23-03-2007
Presiding Officer,
Labour Court,
Sambalpur.

Shri P. K. Mohapatro,
Dt.23-03-2007
Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

N. C. RAY
Under-Secretary to Government